REGISTERED No. D. 221

17-3-58

The Gazette of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

No. 5] NEW DELHI, TUESDAY, FEBRUARY, 25, 1958/PHALGUNA 6, 1879

LOK SABHA

The following report of the Joint Committee on the Bill to provide for the release of offenders on probation or after due admonition and for matters connected therewith was presented to Lok Sabha on the 25th February, 1958:—

Composition of the Joint Committee

Lok Sabha

Sardar Hukam Singh—*Chairman*

MEMBERS

2. Pandit Thakur Das Bhargava
3. Shrimati Uma Nehru
4. Shri Sinhasan Singh
5. Shri C. D. Gautam
6. Shri Jaganatha Rao
7. Shri T. Manaen
8. Dr. Y. S. Parmar
9. Shri Venketrao Shriniwasrao Naldurkar
10. Shri N. Keshava
11. Shri M. K. Jinachandran
12. Shri C. Bali Reddy
13. Shri K. S. Ramaswamy
14. Shri S. Easwara Iyer
15. Kunwarani Vijaya Raje

16. Shri Yadav Narayan Jadhav
17. Shri Purushottamdas R. Patel
18. Shri Jagdish Awasthi
19. Shri Naushir Bharucha
20. Dr. Sushila Nayar
21. Shrimati Mafida Ahmed
22. Shrimati Sangam Laxmi Bai
23. Shri B. N. Datar
24. Shri Shree Narayan Das

Rajya Sabha

25. Shri Surendra Mohan Ghose
26. Shri K. Madhava Menon
27. Shri Ahmad Said Khan
28. Shrimati Lilavati Munshi
29. Shri B. M. Gupte
30. Shri R. U. Agnibhoj
31. Shrimati T. Nallamuthu Ramamurti
32. Shri N. R. Malkani
33. Prof. A. R. Wadia
34. Shri Abdur Razzak Khan
35. Shri Rajendra Pratap Sinha
36. Shrimati Violet Alva.

DRAFTSMAN

Shri R. C. S. Sarkar, *Joint Secretary and Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai, *Under Secretary.*

Report of the Joint Committee

I, the Chairman of the Joint Committee to which the *Bill to provide for the release of offenders on probation or after due admonition and for matters connected therewith was referred, having been authorised to submit the report on their behalf, present this their Report with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 11th November, 1957. The motion for consideration of the Bill was moved in the House by Shri B. N. Datar on the 14th November, 1957. An amendment to the motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri Shree Narayan Das, on the 18th November, 1957 and was discussed in the Lok Sabha and adopted on the same day.

3. The Rajya Sabha discussed the motion on the 25th and 26th November, 1957 and concurred in the said motion on the 26th November, 1957.

4. The message from the Rajya Sabha was read out in the Lok Sabha on the 28th November, 1957.

5. The Committee held seven sittings in all.

6. The first sitting of the Committee was held on the 18th December, 1957 to draw up a programme of work.

7. The Committee at their second and third sitting held on the 5th and 6th February, 1958, respectively had a general discussion on the provisions of the Bill.

8. The Committee considered the Bill clause by clause at their sittings held on the 6th to 8th February, 1958.

9. The Committee considered the Report on the 17th and 19th February, 1958, and adopted the same on the 19th February, 1958.

10. The observations of the Committee with regard to principal changes proposed in the Bill are detailed in the succeeding paragraphs.

11. *Clause 3.*—The Committee feel that a person who has previously been released after admonition under this clause or released on probation under clause 4 should not again be entitled to any benefit

*Published in Part II, Section 2 of the Gazette of India, Extraordinary, dated the 11th November, 1957.

under this clause. This has been provided by adding an Explanation to this clause.

The Committee also feel that an offence punishable under Section 404 of the Indian Penal Code should be brought within the purview of this clause. Necessary amendment has accordingly been made.

12. *Clause* 6 (*original clause* 7).—The Committee feel that the clauses require some rearrangement and accordingly the original clause 7 has been placed immediately after clause 5.

The Committee feel that it should be made clear in this clause that the report of a probation officer should be considered by the court only for the purpose of satisfying itself as to whether the offender should be dealt with under clause 3 or clause 4 and not for the purpose of determining the sentence to be imposed on the offender.

Sub-clause (2) has been amended to make the intention clear.

Sub-clause (3) has been omitted from this clause and has been incorporated in a new clause 7.

13. *Clause* 7 (*New Clause*).—The Committee are of opinion that the reports of probation officers under sub-clause (2) of clause 4 and sub-clause (2) of original clause 7 should be treated on the same footing. Though the reports may be confidential the court should be empowered, if it so thinks fit, to communicate the contents thereof to the offender and to give him an opportunity of producing evidence in relation thereto.

This clause has been inserted to achieve this object.

14. Clauses 8, 9 and 10 correspond to original clauses 6, 8 and 9.

15. *Clause* 11 (*original clause* 10).—In sub-clause (3) of this clause the Committee have inserted the words "with or without fine" after "imprisonment" to make the intention clear.

It has also been made clear under sub-clause (3) that the appellate court can pass any order it thinks fit.

16. Clause 12 corresponds to original clause 13.

17. *Clause* 13 (*original clause* 11).—The Committee feel that a probation officer should be under the control of the district magistrate of the district in which the offender resides, not only in respect of his duties under a supervisory order but also in respect of his other duties under this enactment.

The clause has been amended accordingly.

18. *Clause* 14 (*original clause* 12).—The Committee feel that in item (a) it should be specifically laid down that a probation officer after making enquiries should submit his report to the Court.

A suitable provision has been made to that effect.

The other amendment made in this clause is of a clarificatory nature.

19. Clauses 15 and 16 correspond to original clauses 14 and 15.

20. *Clause* 17 (*original clause* 16).—The Committee feel that all rules made by the State Governments should be laid before the State Legislatures.

The clause has been amended accordingly.

21. *Clause* 18 (*original clause* 17).—The Committee are of opinion that where any public servant commits criminal misconduct in the discharge of his duty and is punishable under sub-section (2) of section 5 of the Prevention of Corruption Act, 1947, the provisions of this Bill should not apply to such a case. This clause has accordingly been amended to exclude sub-section (2) of section 5 of that Act from the operation of this enactment.

22. *Clause* 19 (*original clause* 18).—The amendment made in this clause is of a clarificatory nature.

23. The Joint Committee recommend that the Bill as amended be passed.

HUKAM SINGH,
CHAIRMAN,
JOINT COMMITTEE.

NEW DELHI;
The 21st *February*, 1958.

Minutes of Dissent

I

I entirely agree with the principle underlying this bill, but I feel that unless the Government creates a proper machinery for carrying out the objects, it will be one more Act, which, for a long time to come will be acted upon very indifferently. In some States even today the probation is in existence. On account of the paucity of the probation officers and the Magistrates as well as the insufficiency of places to house the offenders the working of these acts is very unsatisfactory. There is hardly adequate machinery to train probation officers on whom the whole scheme hangs. At present even for juvenile delinquents there are only a few probation officers and their case loads are very heavy. Most of them consider their work as an employment rather than a mission. Probation officers should be those who are inspired with missionary zeal and unless we train such officers I am afraid the scheme may not fully fulfil the object for which this bill is framed.

The age limit given in the Act is 21. I think at present looking to the paucity of officers, Magistrates and the places to house offenders as mentioned above, the age limit should be restricted to 18 for the first five years and only after creating the proper machinery within that period the Parliament should raise the age limit by amending the Act. Nowadays we find, crimes committed, not only by the ignorant and the illiterate people but by the educated youths as well. Very often witnesses are terrorised and maltreated by such youths. I am afraid that nobody will come forward to give any evidence if at the end of that, the witness is going to find that the person against whom he gave evidence would be in a position to harm him. I have known cases where even the Professors and Vice-Chancellors are terrorised by the youth *enmasse* shouting abuses against them and sometimes even beating them. Some of the young educated persons go to the extent of committing thefts and even murder, and harass women. I have heard about a father of a girl belaboured because he objected to the behaviour of some boys who molested his daughter. Even for the sake of a wrist watch, a murder was committed by a student. I again emphasise that there should be a proper machinery created before the Act is enforced.

There is one more suggestion that I would like to make. Whenever there is a reform bill affecting the society, the government, before drafting the bill should give an opportunity to members for discussing

the principles, because once the bill is framed the members have to argue for or against the phraseology of the provisions given in the bill rather than the principles, and sometimes it becomes a matter of prestige for the Government to get the bill through.

LILAVATI MUNSHI

NEW DELHI;
The 19th February, 1958.

II

Under sub-clause (2) of clause 4 it is not obligatory for the Court to call for a report from the Probation Officer before passing the order for probation. It should be noted that under sub-clause (2) of clause 6 a mandatory provision is made in similar circumstances and I do not see any valid reason why this distinction should be made.

The Probation Officer is the linch-pin of the machinery for the implementation of this measure. He is there on the scene to help the court in this matter of probation. There is therefore no reason why his services should not be availed of, before the order for probation is passed. In fact it is essential that his services should be utilized, for, otherwise, important material relevant to the point will not be available to the court at all. Under clause 4(1), before arriving at a decision to release the offender on probation the court has to take into consideration his character, along with the circumstances of the case and the nature of the offence. Under clause 14, the Probation Officer has to report on the circumstances or home surroundings of the accused. Now this information forms an important part of the material shedding light on the character of the offender, which the court must take into consideration. In most cases this information will not be disclosed in the evidence recorded at the trial. The Probation Officer alone can supply it to the court and thus enable it to discharge adequately the duty cast on it by sub-clause (1) of clause 4. Evidently, therefore, in sub-clause (2) it must be made obligatory upon the Court to call for a report from the Probation Officer before passing the order for probation.

I also differ from the majority in providing in clause 18 the exclusion only of sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947. Under other enactments there are equally serious, if not more serious, offences where compulsory imprison-

ment is laid down. I am of opinion that all those cases should be excluded from the operation of this Act.

NEW DELHI; B. M. GUPTE
The 19th February, 1958

III

Probation of offenders bill is a progressive piece of legislation the object of which is to treat the offender not so much as a criminal but as a sick man who is capable of being reclaimed and restored to society as a useful and respectable citizen. In other words, the criminal is to be equated to a sick man who is to be restored to social health with the help of the physician who in this case is the Probation officer. The Probation officer makes a careful analysis of the environment and circumstances of the offender and helps him to overcome the difficulties that led him to commit the offence in the first place. It is obvious that to work this Act, Probation officers of proper calibre and of the right attitude are essential. Therefore the mention of the words "if any" in sub-clause 2 of clause 4 as well as in sub-clause 2 of clause 6 have no place in this Act. The report of the Probation officer is absolutely necessary in the interests of the offender as well as society and should be considered by the magistrate before he decides whether to treat the case under the Probation Act or not, and Probation officer must help the offender after release under this Act to overcome his difficulties and reform his ways. To release an offender without proper probation is exposing society to the risk of the offender repeating his unlawful act and the whole principle of Probation may be discredited. The Act provides for different dates for different States and different parts of the States to apply the Act so that they will have an opportunity to create the necessary machinery before the Act is applied. By having the words "if any" in clauses 4 and 6 as mentioned above, we are leaving open a loophole by which the States might apply the Act without the adequate machinery thus exposing society to the risks noted above. We fear it may retard the progressive trend of adopting correctional rather than punitive attitude in criminology by giving in suitable cases a chance to the offender to improve himself and be spared the stigma attached to imprisonment.

RAJENDRA PRATAP SINHA
JAGDISH AWASTHI
YADAV NARAYAN JADHAV
ABDUR REZZAK KHAN
SUSHILA NAYAR
Y. S. PARMAR

NEW DELHI;
The 19th February, 1958.

IV

"अपराधी परिवीक्षा विधेयक के खंड ४(१) के अन्तर्गत यह व्यवस्था की गई है कि आजन्म कारावास अथवा मृत्यु दंड को छोड़ कर यदि कोई भी व्यक्ति दोषी पाया जाये तो न्यायालय उसे दंड देने के स्थान पर परिवीक्षा पर छोड़ सकता है, चाहे वह व्यक्ति पूर्व का कितनी ही बार का अपराधी क्यों न हो। मेरा निश्चित मत है कि पूर्व अपराधी को परिवीक्षा पर नहीं छोड़ा जाना चाहिये। इस प्रकार आदी अपराधियों (Habitual Offenders) को परिवीक्षा पर छोड़ देने से उस व्यक्ति का सुधार होने की अपेक्षा उसको भविष्य में पुनः अपराध करने का प्रोत्साहन मिलेगा। समाज में अपराधों की संख्या में वृद्धि होगी। विधेयक के खंड ३ के ही अनुसार केवल प्रथम बार अपराध किये हुए व्यक्ति को ही परिवीक्षा पर न्यायालय द्वारा छोड़े जाने की व्यवस्था विधेयक के खंड ४(१) के अन्तर्गत भी होनी चाहिये। किसी भी दशा में न्यायालय को उसकी इच्छा पर पूर्व अपराधी को परिवीक्षा पर छोड़ देने का अधिकार नहीं देना चाहिये क्योंकि न्यायालय इस प्रदत्त अधिकार का दुरुपयोग भी कर सकता है।"

नई दिल्ली ; जगदीश अवस्थी

२० फरवरी, १९५८।

V

We the following members respectfully disagree with the insertion of "or Sub Section (2) of Section 5 of the Prevention of Corruption Act 1957". We are fully aware of the importance of maintaining a high standard of integrity among Government servants and putting down corruption with a heavy hand. But we are unable to see why corruption in a Government servant should be treated differently than corruption among business men, public men and others. The probation act is based on the assumption that most men who become criminals do so because of their environment and special circumstances and that in suitable cases it is possible to change the conditions which led to a man's fall from proper standards and reclaim him as a sound normal citizen. Discretion is left to the Magistrate to decide with the help of the Probation Officers whether a case is fit to be given correctional treatment or punitive measures is necessary. If those guilty of dacoity and murder can be treated under the probation of offenders Act under certain circumstances, there does not seem any reason to treat a Government servant guilty of corruption which may not be of a serious nature at all as a criminal beyond redemption. To do so will be discrimination against a certain section of society which is objectionable from all points of view. An argument may be advanced that petty corruption of petty officials is bigger nuisance to the public than anything else. But the Probation Act makes it clear that the benefit of it cannot be extended more than once. If there is repetition of the offence,

the punitive methods are there to take care of such a case. But to debar all Government servants from the benefits of Probation Act is not right. We should leave it to the Court to decide each case on merits and extend probation to all cases which are considered suitable for such treatment after taking all the relevant facts and circumstances into consideration.

SUSHILA NAYAR
SHREE NARAYAN DAS
Y. S. PARMAR

NEW DELHI;
The 19th February, 1958.

VI

The Bill is introducing a very basic change in the Criminal Law of the country. So far there has been Sec. 562 of the Cr. P.C. wherein provisions have been made for release on probation and even on admonition in rare cases. In certain States there are Probation of offenders Acts also. This Bill seeks to make an All India Law and proposes to delete the provisions of Sec. 562 Cr. P. C. Under Sec. 562(1A) an accused person can be released on admonition in very exceptional circumstances and that also when the offence is of a trivial nature. This Sec. 562 Cr. P.C. or the State enactments, relating to the release of offenders on probation, do not provide any provision wherein the Court is to assign reasons for not releasing an accused on probation or admonition but wants to convict him. This Bill in clause 8 (as now put in by the Joint Committee) lays down that a court has to assign reasons for not releasing an accused below 21 years of age on probation or admonition. It casts a heavy burden on the Court to make out a case for convicting a criminal to a sentence of imprisonment or fine or both, for his failure to release him or her on mere probation or admonition. Human mind is always prone to take an easier and popular line of work and avoid putting oneself in any difficulty. The result would be that all offenders below 21 years of age would find a free passport for being released on probation or admonition. This, in my opinion, is a change, which instead of helping the society to a better growth may lead to more troubles. Even the Reformatory Schools Act provides an age of 15 years. Under Sec. 8 of the Act a court can send a youthful offender after conviction to a Reformatory School for a period of 3 years or upto 7 years. But here there is no such question and the man or woman below 21 has to be released on probation or admonition. The only gratifying factor is that this

act is being precluded, from application to the Reformatory Act and the Suppression of Immoral Traffic in Women and Girls Act, 1956, and the recent Criminal Law Amendment Bill, 1958 which is providing a minimum sentence of one year imprisonment for offences of bribery. This exemption of certain enactments from the application of this Bill should equally apply to other criminal enactments which provide infliction of minimum sentences. All laws should have similar bearings so that the courts may have to apply their judicial descretion alike. There are offences which are more heinous than those enumerated under the above exempted enactments, but in those cases the offender has a chance, and if below 21 years, a clear sailing, to be released on probation or admonition. In my view of the present structure of society and the present unequal distribution of wealth, extreme poverty on the one end with over flowing riches on the other, needs a cautious change in criminal law. Society needs a great evolution, socially, economically and educationally before such mental creative laws could be enacted.

Then there is another revolution in the judicial frame-work. Hitherto the courts were guided by their sole judicial judgment except in cases tried with the aid of jurors. But henceforth the courts will have to consider and also to call for the reports of probation officers to guide their judgments. It means that a person accused of an offence has not only to prove his innocence before the Court, before whom he is tried, but has also to represent his case to probation officer for getting a favourable report from him. What this would lead to, in our present set up, can better be guessed than written. Therefore in my opinion at least sub. cl. (2) of clauses 4 and 6 should have no place in the Bill. I agree with my colleague Shri Thakur Das Bhargava that a schedule should be appended wherein the provisions of this bill should not apply. I reserve my right to move amendments to the Bill in the House.

NEW DELHI; SINHASAN SINGH

The 21st February, 1958.

VII

I am afraid I am unable to share the views of the majority of the Joint Committee on account of difference of outlook on fundamental issues. The Bill as it emerges from the Joint Committee effects a radical shift from the deterrent to the reformatory principle.

I am unable to see any compelling argument for such a radical change. No doubt, reformation must have an important place in our penal reforms but it is extremely desirable to proceed cautiously. In my opinion, as a first step towards an integrated system wherein the principle of admonition and release of offenders on probation should have proper place, we should proceed with admonition principle being confined to persons under 21 and the probation being extended to those under 25, leaving to the Magistracy in exceptional cases to extend these principles beyond these ages.

2. The scheme of the Bill as it emerges from the Joint Committee is that a person of any age may be released on admonition, provided there was no previous conviction against him and provided he committed offences under the Penal Code either under the sections specified or offences punishable with two years either under the IPC or under any other law. Of course, the trying Magistrate is expected to take the circumstances of the case, the nature of the offence and the character of the offender into consideration.

3. Also any man of any age whatsoever whether first offender or a habitual offender is eligible to probation under clause 4 in respect of practically all offences excepting those punishable with death or imprisonment for life. Also under clause 6, immunity from imprisonment is conferred on persons under the age of 21.

4. Let us examine the implications of clauses 3 and 4 which constitute the most important substantive provisions of the Bill. Under clause 3 not only certain offences under sections 379, 380, 381, 404 or 420 of the IPC are admissible for admonition but also all offences punishable with two years either under the Penal Code or under any State or Central Act. The Joint Committee did not have before them complete list of even the titles of State Acts or Central Acts which would be affected by the new Bill while they recommended that the principle of admonition should be extended even to such Acts.

5. Clause 4 is much worse in this respect. The implications are that all offences under the Penal Code or any other law except those punishable with imprisonment for life or punishable with death or included in this clause. It means that probation is admissible in cases of rape, robberies accompanied by hurt, criminal breach of trust in respect of public revenues, forgery, counter-feiting of notes and coins, defiling places of worship or abusing prophets, causing hurt by fire arms or poisoning, kidnapping of minor girls or forcing them into prostitution, perjury or assaulting public

servants in the discharge of their duties. It should be appreciated that the Bill as it emerges from the Joint Committee not only admits of probation in all such cases but no age limit is mentioned nor previous conviction is made a condition precedent to probation.

6. The practical effect of this would be that nobody would come forward to give evidence against accused if they know that after wasting time and energy and incurring his enmity, all that they can secure is release of the accused on probation. The retributive sense in the public will remain unsatisfied and public co-operation in the prosecution of the offender will be at best lukewarm. Clause 6 of the Bill imposes restriction on imprisonment of offenders under 21 years of age. Of the few judges whose opinion on the Bill has been circulated, the honourable Judges have made a suggestion that this age be reduced to 18. I fully agree with the opinion expressed by the learned Judge Mr. Justice M. L. Chaturvedi of the U.P. High Court that there is possibility of more young persons under 21 being used as tools by criminal elements and corrupted by offenders than of their being reclaimed by probation officers. The arguments advanced were that neither admonition nor release on probation is compulsory and that the Magistrates could be trusted to give adequate sentences where the offences were sufficiently grave and such punishment was warranted by the circumstances of the case. With due respect, I am unable to appreciate this argument since we are already laying certain restrictions in clause 3 that the previous conviction is a bar and the offence must be punishable with imprisonment for not more than 2 years. If the Magistrates could be left to exercise their judgment, I fail to see why these restrictions should exist in clause 3. Similarly, if again the Magistrates could be expected to use their discretion, there is hardly any reason for providing in clause 4 exemption of offences punishable with death or imprisonment for life. It is not so much a distrust of the Magistracy but it is the duty of the legislature to lay down specific principles and policy on which admonition could be admissible or an offender could be released on probation. The Bill as it emerges from the Joint Committee also proceeds on an unwarranted assumption that all offenders whether first or habitual and whether youthful or otherwise are capable of being reformed. Individual illustrations were cited to show that there have been cases of habitual offenders turning over a new leaf, a significant illustration being that of one Jaga dacoit who after committing several murders turned over a new leaf and now was leading an exemplary life. I have no doubt that these illustrations are true but the logical fallacy in them is that these hon. Members proceed from single illustrations to generalise. In my opinion, there would be many more Jaga dacoits incapable of reforming as against the one who has reformed. It would be

dangerous to extend probation to all cases without providing the safeguard of a previous conviction being condition precedent to admonition or release on probation.

7. Also I regret that the hon. Members have proceeded on the assumption that the Centre as well as the States have the necessary requisite paraphernalia for the successful working of a probation system. This implies not only an adequate cadre both in number and quality of personnel, probation officers, but also adequate financial provision for their travelling as has Dr. Reckless himself suggested, a good machinery for follow-up of released cases, vocational training for probationers and above all avenues of employment. All these conditions were badly lacking and as to question of employment—the most important feature in the life of a released offender—the Bill passes the baby to the probation officer and the Government washes its hands clean of it.

8. I am of the view that an integrated system of penal reform should prescribe admonition as the rule for persons under the age of 21 and probation for young persons under the age of 25. I conceive that there might be a good few cases in which either from the circumstances of the case, nature of the offence or the exemplary character of the offender, it may be desirable to apply the provisions of this Bill to persons above those ages; in such cases, power should be left to the Magistrates to do so. The difference is whereas the Joint Committee seeks to make it a general rule that admonition and probation should be more or less claimable as of right, and imprisonment only an exception, what I submit is that admonition should be more or less as of right for persons under 21 for specified offences and probation for persons under 25 and that over these ages admonition and probation should be by way of exceptional treatment.

9. Also a question arose as to the application of the Bill to such laws both under the Indian Penal Code which prescribe a minimum sentence for particular offences and other Acts prescribing such minimum punishments whether passed by Parliament or State Legislatures. An amendment was made to clause 18 under which Criminal Law Amendment Act very recently passed by the Parliament has been excluded from the scope of this Bill on the ground that corruption among Government servants is an offence that requires to be firmly rooted out. It is obvious that barring that mentioned in clause 18 of the Bill, the Bill will apply to all other Acts prescribing any minimum sentence, those already on the statute book or such as may be passed in future. I do not see what charm is there for either this Parliament or State Legislature in future providing for a minimum sentence if this Bill is to render them nugatory the moment they are placed on the statute book. Also I fail to see the logic of those who

make limited exemption in this respect that if a Jaga dacoit could be expected to turn over a new leaf after numerous murders, why cannot the vast mass of Government peons or clerks accepting a bribe ranging from 4 As. to perhaps Rs. 15 or 20/- be expected to show similar reformatory trend. Also the application of this Bill to State Acts deprives the States of the freedom to single out such offences for special treatment and minimum imprisonment as in their opinion deserve to be firmly suppressed, as the Centre has shown for suppressing corruption. The Bill takes away the flexibility of State legislation indirectly. I do not know what the consequences of the application of this Bill would be to offences under Navy Act and to offences under laws designed to secure discipline in other armed forces or the Police.

10. I am also unable to see how in matters of small offences, it would be possible at all to implement the provisions of this Bill. For example, ticketless travelling, begging, hawking, failure to comply with Municipal requirements and petty traffic offences which run into hundreds of thousands in various States, can hardly be properly dealt with. Clause 3 requires that a man should be a first offender. In order to trace his previous antecedent, a huge fingerprint bureau will have to be maintained and finger prints of all petty offenders running into lakhs would have to be taken if we have to be reasonably sure that there is no previous conviction. Such a thing is impossible and in the actual implementation of the Bill, the only alternative would be either to keep on treating the habitual petty offender as a first offender or to deny him the benefit of clause 3.

I am of the opinion that clauses 3 and 4 should have been recast.

12. In conclusion, I must state that no satisfactory case has been made out for this radical shift of emphasis from deterrent to the reformatory principle. Too much sympathy is being shown for the criminal, none for the victims of his crime, not even to the extent of making a provision in the Bill for proper reimbursement to the injured party for the grievous injury it may have sustained. Having experience of nearly over a quarter of a century of Police Courts, I am of the view that the Bill is capable of considerable mischief and may undermine the very foundations of administration of justice in India. As my differences with the Joint Committee are of a radical nature, I have been compelled to append this minute of dissent.

NEW DELHI; NAUSHIR BHARUCHA

The 22nd February, 1958.

VIII

I regret I do not agree with the majority view. I believe due admonition or probation be given to persons who happen to be a victim of circumstances and commit any offence. It is no use putting such persons in jail.

It is discretionary to a court to release a guilty person on probation or after due admonition but the advantage of probation or admonition must be given to him who repents for his act. So I am of opinion that admonition or probation be only given to him who comes to court with repenting heart and admits to have done an act through circumstances of which he fell victim. This must be at the opening of his trial.

A man contesting his guilt in several ways and at last after a long trial is found guilty, cannot be said that he repents for his act and intends to be improved.

For this reason, I am of opinion that in clauses 3 and 4 suitable amendments be made so that admonition or probation be given to only those who come repenting for their acts and express repentance in the beginning of trial.

In clause 5 discretion is given to courts to award compensation to a complainant. A complainant comes to court to seek redress for a criminal act done to him. He spends money, time and labour to prove guilt against a crime doer. A court in the end may release a crime-doer on probation or after admonition and may not award any compensation to a complainant. A court may not use discretion. Should the matter of compensation in such matter be left to the discretion of a court? I believe that it must be mandatory for a court to award compensation to a complainant before an order of probation or admonition is passed. For this suitable amendment in clause 5 is necessary.

NEW DELHI; P. R. PATEL

The 22nd February, 1958.

IX

The Probation of Offenders Bill seeks to broaden the scope of the provisions relating to admonition and to introduce the system of probation in States in which it previously did not exist. It further seeks to abolish the First Offenders Act which existed in several States and to substitute for these the provisions relating to probation

given in the Bill. It further aims to give immunity to offenders below the age of 18/21 years from imprisonment unless the Court gives special reasons and also explains why such an offender was not released under the provisions relating to admonition or probation. The provisions relating to admonition will cover all the offences under the Penal Code as well as other laws in which sentence of two years or less or fine is awardable including offences under 379, 380, 381, 404 and 420 of the I.P.C. The probation provisions are proposed to apply to all offences in which the punishment is neither death nor imprisonment for life. At the time when the Indian Penal Code was enacted the provisions relating to admonition and probation were not in vogue anywhere, the artificial division of offences into two classes, namely, those in which punishment was two years or less for admonition and those in which punishment was neither death nor imprisonment for life or others for probation was never countenanced by the framers of the Code. The basis of such division is arbitrary, illogical and unprincipled and should never have been impressed into service for the purpose of admonition and probation.

The particular circumstances of every offence and offender including the nature of the crime and character of the offender as given in clauses 3 and 4 furnish the real reasons of treatment under the admonition and probation provisions. If a person under a sudden impulse of passion commits a trivial offence or there are extenuating circumstances which call for special relaxation relating to punishment admonition will seem better than sending him to jail. If the compulsion of circumstances and events over which offender has no control drives him to a course of conduct in which the offender is practically not a free agent he is deserving of sympathetic treatment rather than being sent to jail. But it is not only first offenders who have the monopoly of such circumstances. The first offence may only be a very slight one, say, ticketless travel or juvenile smoking or petty gambling and the second offence may be such as may reasonably attract the provisions of clause 3 of the Bill, what possible justification is there not to give the benefit of clause 3 to such an offender. The first offence may be of a serious nature and the second one of too trivial—why should such a person be denied the benefit of clause 3. I am therefore, of the opinion, that the provisions of clause 3 should not be restricted to the case of first offenders alone.

When I consider the list of offences punishable with two years imprisonment I find therein included such serious and heinous offences as shock one's sensibility. The list includes offences under:

135, 136, 153A, 165/70, 177, 182, 203, 217, 229, 254, 262, 264/67, 270/72, 296, 298, 345, 354, 355, 356, 374, 376, 385, 465, 486, 498, 505/509.

Sections 420 and 381 relate to very serious offences and should never be included in the list of offences in which admonition alone is sufficient. A petty present or bribe of 8 as. or a rupee to a chaprasi or clerk or bribery of a bundle of firewood or grass to an Octroi clerk are certainly not comparable with offences under 376, 354, 385, 465 and others.

The principle that certain offences in which the law provides for compulsory award of imprisonment should be excluded from the purview of the Bill has been accepted and acted upon in the Bill. There is no ground for discrimination between an offence mentioned in Criminal Law Amendment Act and an equally or more heinous offence in which award for compulsory imprisonment has been provided by other sections of the Indian Penal Code or any special or local law.

The legislature in its wisdom has provided compulsory imprisonment in regard to many special laws because of the heinousness of the offence and all such laws have been made ineffective of their purpose by the provisions of the Bill. The Legislature will not be well advised in stultifying itself in this manner by frustrating the purposes and principles which furnished the basis of enacting such laws. In my view therefore, logic, reason and public interest of a high order necessitate that we should provide a Schedule of offences in respect of which admonition and probation will in no case be resorted to. There are many cases in which it appears to be scandalous that admonition and probation may be allowed. The aggrieved person will in such cases take their own revenge and such provision of admonition or probation will only provide an incentive for commission of offences. Our society has not progressed to such an extent that private revenge has been exercised from the mind of aggrieved persons. It is absolutely necessary that such a Bill be prepared with regard to offences under the Penal Code. It is easy to make one. In regard to special and local laws the States should be authorized to notify in regard to offences contained in particular acts that such and such law will fall within the category of offences which will be subject to admonition or probation provisions, in case the Central Government is unable to provide the list.

The provisions contained in clause 4 constitute a departure from the present law as the various laws in the States only apply to cases of first offenders. Now clause 4 applies to recidivists also. For the present it will be enough if we restrict its scope to offences punishable with 7 years imprisonment minus those included in schedule as indicated above.

Let us not enact laws which are very much ahead of the time and circumstances in which we live. Let us hasten slowly. There is time enough to extend the provisions gradually if experience proves the efficacy of these provisions.

The success of the provision relating to supervision is only possible if we have got probation officers who are men of character and integrity whose example and guidance is supposed to reform the offenders. When the Hon'ble Minister tells us that it is not obligatory for every district to have a Probation officer and there might be places where none will be appointed in the near future, the basis and justification of the applicability of these provisions on a wide scale are lost. Let us not spread our net too wide. It will not be amiss to evaluate the moral basis of substitution of these provisions relating to admonition and probation at this stage. In admonition there is the unilateral act of the court in holding the accused guilty and warning him. The offender gets off too cheaply. In cases relating to theft, cheating and other offences which involve full deliberation and determination what possible effect this formula of admonition in place of stay in jail, the sample of correction will have, passes one's understanding. The accused does not say a word of repentance or promise future reform or abstention from crime. The aggrieved shall have to spend money in bringing home the guilt to the accused and will thus be twice injured even if offence is proved. The accused will crack his knuckles and chide the aggrieved for his seeking unsuccessful remedy in Court.

In case when there will be no supervisory order the execution of a bond for payment of a certain amount in case of infraction of conditions will provide no moral obligation or sanction for refraining from crime. The consent of the accused to the bond will not be voluntary. He shall have to execute the unilateral orders of the court and the only sanction will be the consequences in case he breaks the Bond. Every non-offender is also under a duty and moral obligation to the State to keep the peace and be of good behaviour and the offender will do no more than be bound by a bond containing these conditions. Speaking psychologically there will be no moral effort or pressure of the kind which restrains one from committing offences. Thus in a large number of cases the admonition order and bonds will not be fully effective in weaning the offenders from crimes and in giving satisfaction to aggrieved persons. On the contrary the fear of punishment is the greatest deterrent and many a people does not commit crimes for fear of consequences of conviction by a court. To the extent this fear will be weakened the incentive to commit offences will increase—Jails, or the temples of correction as

they ought to be are being improved and almost every State has appointed its jail reform committee. In several States the conditions of jail life are much improved than before. There are good arrangements for various industrial education, payment of wages, parole system etc., the like of which we do not find outside. Another effect of bringing about conditions in which offenders may not be sent to jail will be that witnesses will not be available to give evidence. The knowledge that the offender is free and will remain free from punishment will deter many people from giving evidence and it will be difficult to prove offences. In places where even today security, law and order position are not very satisfactory such provision will make life still more insecure and unsafe.

In this connection, the special provision relating to offenders between the ages of 18|21 is bound to play havoc. This age period is the period in life when passions run high, reason and prudence are cast to the winds and the youthful urges to violence and revenge are very paramount in the human breast. Such youthful men are quite reckless, turbulent and violent in this period of life. Usually the "ghazis" come from this age period. If these provisions are widely known as they are bound to be and the fear of imprisonment goes away it is feared that lawlessness shall increase and terror shall hold sway in many rural parts. There is no justification for enacting clause 6. The provisions can however be made applicable for the age period 16/18.

Young age is certainly a circumstance which shall be considered for applicability of clauses 3 and 4 as it was one of the circumstances worth being considered under the provisions of 562 and 562-I-A of Criminal Procedure Code. The highest judicial pronouncement of Courts have considered the age of 16/18 as an extenuating circumstance for not imposing capital sentence. Such a blanket provision for age between 18|21 will be very harmful and is unjustified. Clauses 3 and 4 will take proper care of youthful offenders and are more than ample in scope and it is suggested that the word "age" may be inserted in these clauses.

A man or woman of 18 years is capable of fully realizing the consequences of his or her act and there is no reason for not punishing such offenders with imprisonment if in the opinion of the court this is the proper form of punishment.

In the Punjab it has been estimated that about 10-12% of convicts belong to the age period of 16/21. There is no reason to think that similar percentage do not obtain in other parts of the country. Thus, in my opinion, the weakening of the sanction for ages 18/21 is pregnant with high potentialities for increase in crime.

Confidential Reports:—The provisions relating to confidential reports before the accused is sentenced for the offence are opposed to all canons of assessment of guilt. It is true that the reports are ostensibly called for finding if probation is justifiable and what ought to be the condition of the bond and if supervisory order is to be passed.

But supposing that the report is unfavourable to the accused and several instances of previous crimes are there and probation is not allowed this will result in the accused getting a severer punishment than what he would have got if no such report existed on the record. This is too much to expect that the Court will be able to shake off the influence and effect of such a report while sentencing the accused for the original offence or after he has violated any conditions of the bond. Accordingly to the provisions of the Evidence Act the evidence of bad character of accused is not relevant ordinarily but as there are no different compartments in human head for recording impression, such reports are bound to affect the case of accused prejudicially in cases in which punishment will be given. The provision of confidential report is still more objectionable. If it is unfavourable to the accused he must be given opportunity to rebut it in case he proposes to do so. If it is confidential from prosecution even then it is objectionable as the report may be partial towards accused and may be giving good character to him whereas the prosecution knows facts to the contrary which have been brought on record on account of the provisions of the Evidence Act. Thus both ways it is an unfair provision.

In my humble opinion the provisions relating to the assessment of compensation and payment thereof are in the nature of practical hindrances in the working of these provisions. At present it is very rare that affected persons bring civil suits for compensation or are awarded compensation for such civil wrongs. Only things recovered and proved to be owned by complainants are returned or sometimes out of the fine recovered a portion is given to him. Under the present provisions the complainants will always want that compensation be paid to them and thus litigation is bound to increase and intensify. The working of these provisions will become more complicated and difficult if the criminal courts have to go into the difficult question of assessment of compensation and direction for payment. The case may be taken to higher civil courts and delay is sure to be caused.

Another aspect of the case which cannot be altogether disregarded is that possibly the fate of accused treated under the provision relating to probation may become worse than it would have

been if no probation was given to him. If the accused who has been under probation for 2½ years becomes guilty of violating even an immaterial condition of the bond and is unable to pay Rs. 50|- he is liable to be punished for the original offence and thus he may have to undergo full punishment for original offence and this long probation period for the nonce.

These probation officers, I am afraid, if endowed with powers to report about total releases also may in time become even more powerful and influential than police officers and judges and if such powers are not restricted or circumscribed they will lead to corruption and tyranny. Even now it is apprehended that for the first few years it will be difficult to get probation officers of the right type and character. Then if they are not in sufficient numbers and more persons are put in their charge than they can properly look after, their utility may be marred. In ordinary cases those who will be under supervision may find their lot too hard and mere displeasures of the probation officers may lead to unhappy and drastic consequences. Several of the State Acts have a provision in which accused of the age of more than 25 or 26 years are not allowed to be under supervision orders.

Justice to be effective must be swift and certain. These wide provisions make it dilatory and uncertain. Before orders of probation would be effective the cases will in many cases be taken to the highest courts.

Not that I am opposed to the system of correction or that recourse to jail should not be appreciably lessened though I am sorry to observe that there is no provision in this Bill to banish imprisonment for less than 3 months and for trivial offences.

I am further afraid that probation provisions will only be successful and effectual when there are efficient arrangements for reformation of guilty persons. In other countries there is a network of workhouses, workshops, factories, schools and asylums and reformatories and those who suffer from economic maladjustments or unemployment are given proper respite and avenues for amelioration. There are psychologists and psychiatrists and experienced persons well versed in the science of penology and reform who go into the antecedents, deficiencies, maladjustments, malformation of character of offenders and they prescribe like a doctor remedies for the offenders. We have no corresponding arrangements outside jails. It is necessary to have rescue houses, reformatories and arrangements for giving right kind of employment if probation is to be fully successful. In the interests of the system of correction

we should see that we do not rush headlong into the system without proper safeguards and arrangements otherwise its success will be jeopardized.

In certain parts of the country where law and order position is not fully established or there is insecurity in the air these provisions should await introduction till better conditions prevail. For proper control of probation officers there must be safeguards provided in the bill to restrain them from misbehaviour at any rate it is not necessary to have clause 16 in the bill.

An alternative system previously suggested by the reformists was that the offender after he has been pronounced guilty by the courts was to be made over to a board consisting of psychologists, psychiatrists and other experienced persons who would after considering the circumstances, antecedents, age, inclinations and proclimities of the offender suggest and prescribe the remedy for reform of the offender and send him to any reformatory, school, asylum, factory or industrial home for improving his character and rounding his angularities if any. Perhaps this may prove more potent and effective in tackling this serious problem than the bare provisions relating to admonition and probation.

THAKUR DAS BHARGAVA

NEW DELHI,
The 23rd February, 1958.

X

I think that in clause 6 the emphasis should not be on dealing with the offender under clauses 3 and 4 and therefore in clause 6 sub-clause (1) in line 4 after the word 'Guilty' the word "shall" be substituted by the word "May".

I wish that the Courts may apply their judgment freely and may sentence the offender to imprisonment if in their free judgment this is desirable or may deal with the offender under clauses 3 and 4 if they think it is proper to do so. If clause 6 remains as it is, the Courts will find it difficult to sentence the offender to imprisonment. It is only a question of emphasis.

AHMAD SAID

NEW DELHI,
The 24th February, 1958.

Bill No. 79-B of 1957

THE PROBATION OF OFFENDERS BILL, 1957

(AS AMENDED BY THE JOINT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisk indicates omission.)

A

BILL

to provide for the release of offenders on probation or after due admonition and for matters connected therewith.

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Probation of Offenders Act, 1958.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Code" means the Code of Criminal Procedure, 1898; 5 of 1898.

(*b*) "probation officer" means an officer appointed to be a probation officer or recognised as such under section 13;

(*c*) "prescribed" means prescribed by rules made under this Act;

(*d*) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898, shall have the meanings respectively assigned to them in that Code. 5 of 1898.

Power of court to release certain offenders after admonition.

3. When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

45 of 1860.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

Power of court to release certain offenders on probation of good conduct.

4. (*1*) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(*2*) Before making any order under sub-section (*1*), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(*3*) When an order under sub-section (*1*) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Power of court to require released offenders to pay compensation and costs.

5. (1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

Restrictions on imprisonment of offenders under twenty-one years of age.

6. (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other

information available to it relating to the character and physical and mental condition of the offender

Report of probation officer to be confidential.

7. The report of a probation officer referred to in sub-section (2) of section 4 or sub-section (2) of section 6 shall be treated as confidential:

Provided that the court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.

Variation of conditions of probation.

8. (1) If, on the application of a probation officer, any court which passes an order under section 4 in respect of an offender is of opinion that in the interests of the offender and the public it is expedient or necessary to vary the conditions of any bond entered into by the offender, it may, at any time during the period when the bond is effective, vary the bond by extending or diminishing the duration thereof so, however, that it shall not exceed three years from the date of the original order or by altering the conditions thereof or by inserting additional conditions therein:

Provided that no such variation shall be made without giving the offender and the surety or sureties mentioned in the bond an opportunity of being heard.

(2) If any surety refuses to consent to any variation proposed to be made under sub-section (1), the court may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.

(3) Notwithstanding anything hereinbefore contained, the court which passes an order under section 4 in respect of an offender may, if it is satisfied on an application made by the probation officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into by him.

Procedure in case of offender failing to observe conditions of bond.

9. (1) If the court which passes an order under section 4 in respect of an offender or any court which could have dealt with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date which it may fix for hearing.

(3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith—

(a) sentence him for the original offence; or

(b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.

(4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.

Provision as to sureties.

10. The provisions of sections 122, 126, 126A, 406A, 514, 514A, 514B and 515 of the Code shall, so far as may be, apply in the case of bonds and sureties given under this Act.

Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.

11. (1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.

Removal of disqualification attaching to conviction.

12. Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence.

Probation officers.

13. (1) A probation officer under this Act shall be—

(a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government; or

(b) a person provided for this purpose by a society recognised in this behalf by the State Government; or

(c) in any exceptional case, any other person who, in the opinion of the court, is fit to act as a probation officer in the special circumstances of the case.

(2) A court which passes an order under section 4 or the district magistrate of the district in which the offender for the time being resides may, at any time, appoint any probation officer in the place of the person named in the supervision order.

Explanation.—For the purposes of this section, a presidency town shall be deemed to be a district and chief presidency magistrate shall be deemed to be the district magistrate of that district.

(3) A probation officer, in the exercise of his duties under this Act, shall be subject to the control of the district magistrate of the district in which the offender for the time being resides.

Duties of probation officers.

14. A probation officer shall, subject to such conditions and restrictions, as may be prescribed,—

(a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person

accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;

(*b*) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;

(*c*) advise and assist offenders in the payment of compensation or costs ordered by the court;

(*d*) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4; and

(*e*) perform such other duties as may be prescribed.

Probation officers to be public servants.

15. Every probation officer and every other officer appointed in pursuance of this Act shall be deemed to be *public servants within the meaning of section 21 of the Indian Penal Code. 15 45 of 1860.

Protection of action taken in good faith.

16. No suit or other legal proceeding shall lie against the State Government or any probation officer or any other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

Power to make rules.

17. (*1*) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) appointment of probation officers, the terms and conditions of their service and the area within which they are to exercise jurisdiction;

(*b*) duties of probation officers under this Act and the submission of reports by them;

(*c*) the conditions on which societies may be recognised for the purposes of clause (*b*) of sub-section (*1*) of section 13;

(*d*) the payment of remuneration and expenses to probation officers or of a subsidy to any society which provides probation officers; and

(*e*) any other matter which is to be, or may be, prescribed.

(*3*) All rules made under this section shall be subject to the condition of previous publication and shall, as soon as may be after they are made, be laid before the State Legislature.

18. Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897, or sub-section (*2*) of section 5 of the Prevention of Corruption Act, 1947 or the Suppression of Immoral Traffic in Women and Girls Act, 1956, or of any law in force in any State relating to juvenile offenders or borstal schools. **Saving of operation of certain enactments.**

8 of 1897.
2 of 1947.
104 of 1956.

19. Subject to the provisions of section 18, section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force. **Section 562 of the Code not to apply in certain areas.**

M. N. KAUL,
Secretary.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1958